

## REMARKS

Claims 1-13 and 15-37, as amended, are pending in this application. In this Response, Applicants have amended claim 18 to clarify that, in one embodiment, the present invention is directed to golf objects. In addition, Applicants have provided remarks that explain some of the differences between the references cited by the Examiner and the present invention.

In light of the Advisory Action, Applicants believe these amendments serve a useful clarification purpose, and are desirable for clarification purposes, independent of patentability. Accordingly, Applicants respectfully submit that the claim amendments do not limit the range of any permissible equivalents. As no new matter has been added, Applicants respectfully request entry of these amendments at this time.

## THE REJECTIONS UNDER 35 U.S.C. §112

At pages 2-3 of the final Office Action, the Examiner rejected claims 18-27 under 35 U.S.C. § 112, second paragraph, as being indefinite. In the Advisory Action, the Examiner indicated that Applicants' arguments with respect to the preamble of claim 18 were persuasive. However, the Examiner maintained the § 112 rejection with regard to the first and second cameras. To facilitate allowance of claims 18-27, Applicants have amended the claim to clarify that both golf objects include at least one fluorescent marker thereon. In light of this amendment, Applicants submit that the Examiner's rejection under 35 U.S.C. § 112 has been overcome. As such, reconsideration and withdrawal of the rejection is respectfully requested.

## THE REJECTIONS UNDER 35 U.S.C. § 103

It is unclear from the Advisory Action as to whether the Examiner still maintains any of the § 103 rejections. As such, Applicants maintain their previous arguments with respect to the § 103 rejections based on the Ortyn and Gobush references. As discussed fully in the previous Response to Final Office Action filed December 21, 2005 ("Response to Final") and in brief below, neither reference, either alone or in combination, disclose or suggest the present invention recited in claims 1-13 and 15-37.

**Ortyn Is Not Analogous and Does Not Disclose or Suggest the Present Invention**

Ortyn is not within the field of the present invention and it is not reasonably pertinent to the problem with which the present invention is concerned., *i.e.*, measuring the kinematics of golf objects. MPEP §2141.01(a) states that “[i]n order to rely on a reference as a basis for rejection of an applicant's invention, the reference must either be in the field of applicant's endeavor or, if not, then be reasonably pertinent to the particular problem with which the inventor was concerned.” MPEP § 2141.01(a); *see also In re Oetiker*, 977 F.2d 1443, 1446, (Fed. Cir. 1992). Ortyn satisfies neither requirement.

Ortyn generally discloses an apparatus for measuring the velocity of extremely small moving objects, *e.g.*, cells, and includes. *See Para. 0023.* A light source shines on the cells, the reflectance of which is directed to a detector for determining velocity. *See Abstract.* In several embodiments, the cells are deposited on a support that moves through a field of view. *See Para. 0098.* In an alternate embodiment, the cells that are entrained in a fluid flow that passes through the field of view. *Id.*

In contrast, the present invention provides a system and method for measuring the kinematics of golf clubs and golf balls using fluorescent markers. As such, Ortyn is not in the presently claimed field and/or not reasonably pertinent to the present invention for at least the following reasons. First, the golf objects measured in the present invention are much larger than the objects measured in Ortyn and, thus, the systems for measuring velocity of the present invention differ significantly at least with respect to the magnitude. *See Response to Final at Page 3.* Second, the systems for measuring velocity of the present invention involve at least one high speed camera, at least one light source, such as a strobe lamp, and precise timing circuitry. Third, the golf objects in the present invention are neither mounted on a support that is moved through the field of view, nor are they entrained in a fluid flow that passes through the field of view as required by Ortyn. Fourth, the system of the present invention features the ability to measure the kinematics of the golf objects, including rotation, whereas Ortyn is limited to velocity measurements and does not disclose or suggest the presently recited ability to perform any other kinematic measurements.

Accordingly, Applicants submit that the disclosure of Ortyn is clearly not within the art of the present invention and is not concerned with the problem that the present invention seeks to address, *i.e.*, measuring the kinematic characteristics of golf equipment.

Moreover, even if Ortyn were considered analogous to the present invention, *arguendo*, the claimed subject matter is not taught or suggested in Ortyn. In fact, Ortyn is completely silent as to the use of fluorescent markers. *See Response to Final at Page 4.* As such, Applicants respectfully submit that, contrary to the Examiner's assertion, Ortyn does not disclose or suggest the use of fluorescent markers to determine the kinematics of a cell, let alone the presently claimed golf object.

**Gobush Does Not Remedy the Deficiencies of Ortyn**

The combination of Ortyn and Gobush is also deficient with regard to the invention presently recited in claims 1-13 and 15-37. For instance, Gobush is directed to a monitoring system that determines a golf object's movement and orientation through the use of *a reflective material* to form markers. *See Abstract and Col. 3, lines 3-18.* As such, Gobush suffers from a similar deficiency as Ortyn, *i.e.*, a lack of teaching with respect to the use of fluorescent markers in combination with golf objects.

Moreover, a skilled artisan would have not had any motivation to combine Ortyn and Gobush. Just as Ortyn is not analogous to the present invention, the reference is also not analogous to Gobush. *See Response to Final at Pages 4-5.* The only motivation to combine is through impermissible hindsight.

Thus, neither reference alone, or in any combination, teaches or suggests the present invention. As such, Applicants respectfully request reconsideration and withdrawal of the §103 rejections of the claims.

**CONCLUSION**

All claims are believed to be in condition for allowance. If the Examiner believes that the present remarks still do not resolve all of the issues regarding patentability of the pending claims, Applicants invite the Examiner to contact the undersigned attorney to discuss any remaining issues.

A Petition for Extension of Time is submitted herewith to extend the time for response three months to and including February 27, 2006 (since the due date of February 26, 2006 falls on a Sunday). A Fee Sheet Transmittal is submitted herewith to authorize a charge for the three-month extension of time minus the one-month extension of time already paid for the Response to Final filed December 21, 2005. No other fees are believed to be due at this time. Should any fee

be required, however, please charge such fee to Swidler Berlin LLP Deposit Account No. 195127,  
Order No. 20002.0162.

Respectfully submitted,  
SWIDLER BERLIN LLP

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